IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1653 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANSINH MANSINH - Petitioner(s)
Versus
DIRECTOR GENERAL OF POLICE & 1 - Respondent(s)

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Appearance :
MR MANAV A MEHTA for Petitioner(s) : 1,
Mr. Dipen Desai, Asst.GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 11/01/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner who was at the relevant time serving as 'Unarmed Head Constable' at Godhra Taluka Police Station, has

prayed for an appropriate writ, order or direction to quash and set aside the order dated 9.2.1997 passed by the District Superintendent of Police, Panchmahals, by which the petitioner was put under suspension pending departmental enquiry.

2. It is the contention on behalf of the petitioner that earlier by order dated 5.11.1996 on the same ground and charges the petitioner was put under suspension as departmental enquiry was initiated against the petitioner. However, subsequently by order dated 6.12.1996 the petitioner was reinstated and the petitioner was served with the chargesheet dated 6.12.1996. It is submitted that inspite of the aforesaid subsequently on the same ground and the charges again the petitioner came to be suspended by impugned order dated 9.2.1997. It is the contention on behalf of the petitioner that the charge against the petitioner was that when the

petitioner was on duty on 3.11.1996 in the morning when one Bhupendra Kantilal Soni went there to lodge a complaint the petitioner was not found on duty during the period between 6.40 a.m. and 7.12 a.m., i.e., for 30 minutes. It is submitted that as the petitioner had gone to attend natural call the petitioner was not found on duty. It is submitted that no other allegation has been made against the petitioner.

3. Considering the above and considering the fact that earlier on the same ground the petitioner was suspended, thereafter the said order was revoked, and the petitioner was subsequently reinstated, while admitting the present Special Civil Application, the learned Single Judge of this Court granted ad-interim relief of stay of further implementation and execution of the impugned order dated 17.2.1997, pursuant to which the petitioner continues to be on duty.

4. The learned advocates appearing on behalf of respective parties have no instruction as to the outcome of the departmental enquity. Be that as it may, the fact remains that earlier the petitioner was suspended by order dated 5.11.1996 which was subsequently withdrawn and the petitioner was reinstated in service by order dated 6.12.1996. Even otherwise, on going through the charges levelled against the petitioner and the explanation given by the petitioner, and without entering into the merits and the allegation, it appears to the Court that the allegations against the petitioner are not such which warranted the order of suspension. As stated hereinabove, by way of interim order the order of suspension has been stayed which has continued since more than 10 years. Under the circumstances, and on merits the impugned order of suspension requires to be quashed and set aside.

5. For the reasons stated above, the petition succeeds. The impugned order passed by the respondent No.2 dated 9.2.1997 is hereby quashed and set aside. However, it is directed that if the departmental enquiry is still pending, the same shall be concluded within the period of 6 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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